

**Memorandum**

JUL 18 2000

Date

Michael Mangano

From

June Gibbs Brown  
Inspector General

Subject

Follow-up Review of the Health Care Financing Administration's Efforts to Assure  
Employer Group Health Plan Compliance with Medicare Secondary Payer Data Match  
Requirements (A-02-98-01036)

To

Nancy-Ann Min DeParle  
Administrator  
Health Care Financing Administration

Attached are two copies of our final report on the results of our *"Follow-up Review of the Health Care Financing Administration's Efforts to Assure Employer Group Health Plan Compliance with Medicare Secondary Payer Data Match Requirements."* In a prior report issued in August 1992, *"Medicare as a Secondary Payer - Review of the Health Care Financing Administration's Efforts to Implement the Data Match Project"* (A-09-91-00103), we found that the Health Care Financing Administration (HCFA) had not developed detailed procedures and had not taken appropriate action to properly address employers that refused to provide group health plan information. We recommended that HCFA establish detailed procedures for the imposition of a civil monetary penalty (CMP) on employers that fail to provide the necessary group health plan information.

The objective of this follow-up review was to determine if HCFA has established effective procedures to assure that all employer group health plans respond to requests for information as part of the Medicare Secondary Payer (MSP) data match (DM), including the assessment of a CMP.

Legislation has authorized HCFA to contact employers who are required to provide group health plan information. To accomplish this, HCFA implemented the DM which has been successful in obtaining group health plan information from approximately 1.7 million employers, which is 87 percent of the employers contacted as part of the DMs run from 1991 through 1997. The HCFA reported that the use of this employer-provided group health plan information has resulted in approximately \$2.5 billion in MSP savings to the Medicare program.

However, we found that HCFA has not used all available remedies to obtain group health plan information from the remaining 13 percent of employers who chose not to respond to the MSP DM legislatively-mandated request for information. As of September 30, 1998, HCFA had identified over 200,000 employers who had not responded to requests for

information from 1 or more of the DMs. As a result, HCFA does not have group health plan information on over one million employees and the trust funds continue to be at risk of paying claims for which they do not have liability. If the nonresponding employers had the same percentage of MSP-covered workers and MSP savings as the responding employers, we believe the trust funds may have lost potential savings approximating \$282 million as a result of these employers not responding to DMs I through IV. Not only is the total number of nonresponding employers substantial, but HCFA's statistics show that the number of nonresponding employers is increasing. We believe that the increase in the rate of nonresponding employers is partly due to the fact that HCFA does not aggressively pursue compliance with nonresponding employers.

As part of the DM process, nonresponding employers are notified that if they fail to respond to the request for information, HCFA may impose a CMP. ***Although HCFA has had formal authority since October 1994 to assess CMPs against nongovernmental employers who refuse to respond to the DM request for information, no CMPs have been assessed to date.*** For the employers who failed to respond to the data requests from the prior DMs, we are recommending that HCFA assess CMPs if warranted.

Although HCFA does not have authority to assess CMPs against nonresponding governmental agencies, we believe more forceful action should also be taken to improve compliance by these agencies. We are, therefore, recommending that HCFA seek legislative authority to assess CMPs against governmental agencies which fail to respond to DM requests for information. In the interim, we recommend that HCFA work with the Office of Inspector General (OIG) to partner with oversight agencies of the governmental agencies which failed to respond to prior DMs to encourage these agencies to comply with Federal law.

For future DMs, we recommend that HCFA aggressively follow-up with employers who fail to respond to the data requests. Specifically, we recommend that HCFA write a more forceful follow-up letter to all nonrespondents, make telephone calls or personal visits to those who fail to respond to the follow-up letter, and then assess CMPs when warranted for nongovernmental employers who continue to fail to respond. For governmental agencies who continue to fail to respond, we recommend that HCFA work with the OIG to try to obtain compliance through oversight agencies and assess CMPs if given authority to do so.

The HCFA concurred with our recommendations and has agreed to take corrective action. In response to our draft report, HCFA noted that legislative authority for mandatory data sharing by governmental employers would be a strong tool to identify potential MSP situations. We support this approach and encourage HCFA to seek the necessary legislative authority.

We would appreciate your views and the status of any further action taken or contemplated on our recommendations within the next 60 days. If you have any questions, please call me

Page 3 - Nancy-Ann Min DeParle

or have your staff contact George M. Reeb, Assistant Inspector General for Health Care Financing Audits, at (410) 786-7104.

To facilitate identification, please refer to Common Identification Number A-02-98-01036 in all correspondence relating to this report.

Attachments

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**FOLLOW-UP REVIEW OF THE HEALTH  
CARE FINANCING ADMINISTRATION'S  
EFFORTS TO ASSURE EMPLOYER  
GROUP HEALTH PLAN COMPLIANCE  
WITH MEDICARE SECONDARY  
PAYER DATA MATCH**



**JUNE GIBBS BROWN**  
**Inspector General**

**JULY 2000**  
**A-02-98-01036**

**Memorandum**

JUL 18 2000

Date

From *Michael Mangano*  
June Gibbs Brown  
Inspector GeneralSubject Follow-up Review of the Health Care Financing Administration's Efforts to Assure  
Employer Group Health Plan Compliance with Medicare Secondary Payer Data Match  
Requirements (A-02-98-01036)  
ToNancy-Ann Min DeParle  
Administrator  
Health Care Financing Administration

This final report provides you with the results of our *"Follow-up Review of the Health Care Financing Administration's Efforts to Assure Employer Group Health Plan Compliance with Medicare Secondary Payer Data Match Requirements."* In a prior report issued in August 1992, *"Medicare as a Secondary Payer - Review of the Health Care Financing Administration's Efforts to Implement the Data Match Project"* (A-09-91-00103), we found that the Health Care Financing Administration (HCFA) had not developed detailed procedures and had not taken appropriate action to properly address employers that refused to provide group health plan information. We recommended that HCFA establish detailed procedures for the imposition of a civil monetary penalty (CMP) on employers that fail to provide the necessary group health plan information.

The objective of this follow-up review was to determine if HCFA has established effective procedures to assure that all employer group health plans respond to requests for information as part of the Medicare Secondary Payer (MSP) data match (DM), including the assessment of a CMP.

Legislation has authorized HCFA to contact employers who are required to provide group health plan information. To accomplish this, HCFA implemented the DM which has been successful in obtaining group health plan information from approximately 1.7 million employers, which is 87 percent of the employers contacted as part of the DMs run from 1991 through 1997. The HCFA reported that the use of this employer-provided group health plan information has resulted in approximately \$2.5 billion in MSP savings to the Medicare program.<sup>1</sup>

However, we found that HCFA has not used all available remedies to obtain group health plan information from the remaining 13 percent of employers who chose not to respond to the MSP DM legislatively-mandated requests for information. As of September 30, 1998,

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<sup>1</sup>As reported by HCFA as of September 30, 1998, these are savings attributable to employer responses to requests for group health information made in 1991 through 1997 as part of DM I through IV.

HCFA had identified a total of 245,674 employers<sup>2</sup> with 1,232,786 employees that could have primary health insurance coverage other than Medicare who had not responded to requests for information from 1 or more of the DMs. If the nonresponding employers had the same percentage of MSP-covered workers and MSP savings as the responding employers, we believe the trust funds may have lost potential savings approximating \$282 million as a result of these employers not responding to DMs I through IV.

Not only is the total number of nonresponding employers substantial, but HCFA's statistics show that the number of nonresponding employers is increasing. We believe that the increase in the rate of nonresponding employers is partly due to the fact that HCFA does not aggressively pursue compliance with nonresponding employers.

As part of the DM process, nonresponding employers are notified that if they fail to respond to the request for information, HCFA may impose a CMP. *Although HCFA has had formal authority since October 1994 to assess CMPs against nongovernmental employers who refuse to respond to the DM request for information, no CMPs have been assessed to date.* For nongovernmental employers who failed to respond to the data requests from the prior DMs, we are recommending that HCFA assess CMPs if warranted.

Currently, HCFA does not have authority to assess CMPs against nonresponding governmental agencies. The number of nonresponding governmental agencies is increasing and we believe more forceful action should be taken to improve compliance by these agencies. We are, therefore, recommending that HCFA seek legislative authority to assess CMPs against governmental agencies which fail to respond to DM requests for information. In the interim, we recommend that HCFA work with the Office of Inspector General (OIG) to partner with oversight agencies of the governmental agencies which failed to respond to prior DMs to encourage these agencies to comply with Federal law.

For future DMs, we recommend that HCFA aggressively follow-up with employers who fail to respond to the DM requests. Specifically, we recommend that HCFA write a more forceful follow-up letter to all nonrespondents, make telephone calls or personal visits to those who fail to respond to the follow-up letter, and then assess CMPs when warranted for nongovernmental employers who continue to fail to respond. For governmental agencies who continue to fail to respond, we recommend that HCFA work with the OIG to try to obtain compliance through oversight agencies and assess CMPs if given the authority to do so.

In response to our draft report, HCFA officials concurred with our recommendations. In addition, HCFA noted that legislative authority for mandatory data sharing by governmental employers would be a strong tool to identify potential MSP situations. We support this

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<sup>2</sup>Some employers did not respond to more than one DM mailing and are counted more than once in this total. A total of 245,674 of the mailings were not responded to by 205,306 unique employers.

approach and encourage HCFA to seek the necessary legislative authority. Comments from HCFA to our draft report are included in their entirety in Appendix D.

## **BACKGROUND**

Section 6202 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 (Public Law 101-239) established the Internal Revenue Service (IRS)/Social Security Administration (SSA)/HCFA DM, under which HCFA was authorized to contact employers in order to obtain group health plan information. Subsequent legislation (OBRA 1990 and OBRA 1993) extended HCFA's data matching authority through September 1998. The Balanced Budget Act of 1997 permanently authorized the DM.

The purpose of the DM is to identify, recover, and also prevent improper payments made by Medicare when primary health insurance was available through employer group health plans. To accomplish this, HCFA has performed a series of DMs of IRS, SSA, and Medicare records. From 1991 through 1998 a total of five DMs have been performed covering tax years from 1987 through 1996, as follows:

<b>DM</b>	<b>Year Employer Request Made</b>	<b>Tax Years</b>
<b>I</b>	<b>1991</b>	<b>1987 - 1989</b>
<b>II</b>	<b>1993</b>	<b>1990 - 1991</b>
<b>III</b>	<b>1995</b>	<b>1992 - 1993</b>
<b>IV</b>	<b>1997</b>	<b>1994 - 1995</b>
<b>V</b>	<b>1998</b>	<b>1996</b>

For each of these five DMs, HCFA has contracted with Group Health Incorporated (GHI), a Medicare Part B carrier, to gather data from employers identified by the computer match. The GHI has been responsible for sending questionnaires to employers through a series of staged mailings to obtain the necessary employee health coverage information. Section 1862(b)(5)(C)(ii) of the Social Security Act requires that all employers (governmental and nongovernmental) must respond to the request for information within 30 days of receipt of the inquiry.

To help assure employer compliance, the legislation also provided that employers (other than governmental entities) who willfully or repeatedly failed to provide timely and accurate response to the requested information would be subject to a CMP not to exceed \$1,000 for each individual for which an inquiry was made.

Our prior report showed that HCFA had not developed detailed procedures to properly handle employers that refused to provide group health plan information. We recommended that HCFA establish detailed procedures for the imposition of CMP on employers that fail to provide the necessary group health plan information.

The authority to assess CMPs on nongovernmental employers who fail to respond to DM inquiries was formally given to HCFA, under the *Delegation of Authority for Civil Monetary Penalties, Assessments, and Exclusions Under Various Sections of the Social Security Act, as Amended, and Other Statutes*, dated October 13, 1994.

## **OBJECTIVE, SCOPE, AND METHODOLOGY**

The objective of our follow-up review was to determine if HCFA has established effective procedures to assure that all employer group health plans respond to requests for information as a part of the MSP DM.

Our audit was made in accordance with generally accepted government auditing standards. To accomplish our objective, we reviewed pertinent laws, regulations, and guidelines. We held discussions with HCFA and GHI officials and examined HCFA and GHI documents concerning DM results and procedures developed to assure employer compliance with DM requests.

We also reviewed DM statistical accomplishment reports for DMs I through IV obtained from HCFA and GHI as of September 30, 1998. We did not analyze statistics for DM V, as it was initiated at the start of our review and only preliminary data was available.

To approximate the amount of lost savings to the Medicare program that could be attributable to the nonresponding employers, we identified the percentage of workers that were MSP-covered workers for the employers who responded to DMs I through IV. We applied this percentage to the number of workers identified by the DMs for the nonresponding employers. We have no reason to believe the percentage for responding and nonresponding employers would differ. We then calculated the average savings per MSP-covered worker for the responding employers by dividing the total DM savings reported by HCFA by the number of MSP-covered workers. We then applied this average savings amount to the estimated number of MSP-covered workers for the nonresponding employers.

To determine reasons why employers failed to respond to DM inquiries, we selected a sample of 60 nonresponding employers from DM IV. The sample consisted of the 10 employers with the largest number of identified total workers and a random selection of 50 of the next 1,229 largest nonresponding employers. We contacted each employer via telephone to ask why they did not respond to the DM requests, and we followed-up with GHI to determine whether these employers submitted group health plan information subsequent to our contact.



Site visits to conduct field work at the HCFA central office in Baltimore, Maryland and at the GHI office in New York, New York were made during the period September 1998 through August 1999.

## FINDINGS AND RECOMMENDATIONS

The HCFA has been relatively successful in contacting employers and obtaining from them group health plan information. The HCFA has accumulated group health plan information from approximately 1.7 million employers, which is 87 percent of employers contacted as part of the DMs run from 1991 (DM I) through 1997 (DM IV). This has resulted in approximately \$2.5 billion in MSP savings to the Medicare program, as reported by HCFA as of September 30, 1998.

However, we are concerned about the remaining 13 percent. As of September 30, 1998, HCFA had identified 245,674 employers with 1,232,786 employees that could have primary health insurance coverage other than Medicare who had not responded to requests for information from the DMs. We believe the trust funds may have lost potential savings approximating \$282 million as a result of these employers not responding to DMs I through IV.

Not only is the total number of nonresponding employers substantial, but HCFA's statistics show that the number of nonresponding employers is increasing. We noted that the percentage of nonresponding employers increased from approximately 10 percent for the first two DMs to about 16 percent for the next two matches. We also observed that some employers responded to DM questionnaires for some years, but not to others.

DM	Letter C Mailings	Total Responding Employers	Total Nonresponding Employers	Total Number of Workers
I	719,754	645,888	73,866	341,794
II	427,574	381,701	45,873	192,523
III	304,253	255,775	48,478	349,791
IV	471,195	393,738	77,457	348,678
Total	1,922,776	1,677,102	245,674	1,232,786

## ASSESSMENT OF CMPs

For each of the five DMs, HCFA contracted with GHI to gather data from employers identified by the computer matches. The GHI has been responsible for sending DM questionnaires<sup>3</sup> to employers through a series of staged mailings to obtain the necessary

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<sup>3</sup>Known as "Letter C."

employee health coverage information. Legislation requires that each employer respond within 30 days of the receipt of the inquiry. To help assure employer group health plan compliance with the request for information, HCFA established various follow-up procedures. Follow-up letters informed employers that failure to respond could lead to the assessment of a CMP. If an employer did not respond to all required follow-up letters, GHI informed HCFA that the employer was potentially subject to a CMP assessment and was placed in "CMP status."

As a result of DM I through DM IV, 241,249 nongovernmental employers with 1,084,217 employees have been placed in CMP status.

<b>DM</b>	<b>Employers Subject to CMP</b>	<b>Total Identified Workers</b>
<b>I</b>	<b>73,076</b>	<b>325,577</b>
<b>II</b>	<b>45,151</b>	<b>159,407</b>
<b>III</b>	<b>47,156</b>	<b>282,721</b>
<b>IV</b>	<b>75,866</b>	<b>316,512</b>
<b>Total</b>	<b>241,249</b>	<b>1,084,217</b>

However, HCFA has not taken action on these CMP status employers. As a result, HCFA does not have group health plan information on over one million employees and the trust funds are at risk of paying claims for which they do not have liability.

Although HCFA has had formal authority since October 1994 to assess CMPs against the nongovernmental employers placed in CMP status, no CMPs have been assessed to date. By not following through with the imposition of a CMP communicated to these nonresponding employers, the incentive for employers to respond may be reduced. We believe this may be a contributing factor to the increase in the percentage of employers who failed to respond.

According to HCFA officials, our previous audit recommendation for the imposition of CMPs against nonresponding employers has not been implemented due to limited HCFA resources. While we recognize the problem of resource limitations, we believe that if HCFA assesses the CMPs authorized by DM legislation when warranted, employers would be more likely to respond to the legislatively-mandated request for information, possibly resulting in substantial savings to the Medicare program. Therefore, we recommend that HCFA assess CMPs if warranted against the nongovernmental employers in CMP status. We acknowledge additional resources may be required to implement this recommendation; perhaps the recently-awarded Coordination of Benefits contract under the Medicare Integrity Program could be used as a source of additional resources.

## **ADDITIONAL REMEDIES NEEDED TO ENSURE COMPLIANCE BY GOVERNMENT AGENCIES**

As of September 1998, HCFA identified 4,425 government agency employers (with 148,569 potential MSP employees) that chose not to respond to the DM request for information, and thus were out of compliance with Federal law.

<b>DM</b>	<b>Letter C Mailings</b>	<b>Government Nonresponding Employers</b>	<b>Total Number of Workers</b>
<b>I</b>	<b>719,754</b>	<b>790</b>	<b>16,217</b>
<b>II</b>	<b>427,574</b>	<b>722</b>	<b>33,116</b>
<b>III</b>	<b>304,253</b>	<b>1,322</b>	<b>67,070</b>
<b>IV</b>	<b>471,195</b>	<b>1,591</b>	<b>32,166</b>
<b>Total</b>	<b>1,922,776</b>	<b>4,425</b>	<b>148,569</b>

The MSP legislation specifically states that CMPs cannot be assessed against government agencies. However, HCFA has not developed any alternative procedures to mandate a response from a government agency. When the follow-up letter fails to generate a response from a government agency, no further actions are taken by HCFA.

We contacted an official from 1 State government (with more than 2,000 potential MSP workers identified by DM-IV). This official did not provide us with any specific reason why the State government had not responded to the DM questionnaire. Following up on our contact, a GHI representative telephoned the State official and suggested that the State government use the MSP Voluntary Program.<sup>4</sup> The State official replied that since CMPs cannot be levied against the State, there is no incentive for compliance.

We strongly believe that HCFA should take steps to assure that all government entities comply with Federal law. We are, therefore, recommending that HCFA seek legislative authority to assess CMPs against governmental agencies which fail to respond to DM requests for information. In the interim, we recommend that HCFA work with the OIG to refer the requests for group health plan information to the oversight agencies (e.g., the State Auditor General or the Inspector General) of the government agencies which did not respond to the prior DM requests. We believe these referrals will provide some degree of motivation for the governmental agencies to reply.

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<sup>4</sup>An MSP program initiated by HCFA in which employers agree to voluntarily provide information about Medicare eligible workers covered under the employer group health plan.

## **IMPROVED WRITTEN FOLLOW-UP PROCEDURES FOR FUTURE DATA MATCHES**

Current HCFA procedures have increased the risk that employers will not comply with this legislatively-mandated request for information. Our review showed that HCFA has modified GHI's procedures, significantly reducing the MSP DM follow-up process.

For DM I and DM II, HCFA developed two follow-up letters<sup>5</sup> that were sent to the Chief Executive Officer of employers who did not return the DM questionnaire. If there was no response, GHI placed the employer in CMP status. For DM III, GHI's required follow-up procedures were modified and the initial follow-up letter was discontinued. The new procedures only required the second follow-up letter be sent to employers, indicating the total assessment that could be levied against the employer by HCFA, when employers did not return the DM questionnaire within the prescribed time. Furthermore, in the later DMs, HCFA further modified GHI procedures and only required GHI to send the follow-up letter by certified mail to those employers with 100 or more workers. When a DM questionnaire was not received from an employer in response to this one follow-up letter, GHI placed the employer in CMP status.

At various times, HCFA has authorized use of a more strongly worded follow-up letter<sup>6</sup>. For example, in 1997, using DM III noncompliant employers, HCFA authorized GHI to mail a follow-up letter to the Chief Executive Officer of the 267 noncompliant employers with more than 100 workers. This follow-up letter incorporated more strongly worded language which informed employers that HCFA may assess a CMP of \$1,000 for each worker named in the inquiry, subpoena the employer's business records, investigate the group health plan or large group health plan for the determination of non-conformance, and potentially make a referral to the IRS for the imposition of an excise tax on the employer.

As a result of this mailing, 125 of the 267 noncompliant employers (47 percent) responded to the questionnaire, and 54 (20 percent) requested, as of September 30, 1998, either additional copies of the questionnaire or further extensions of time. Although this follow-up letter produced meaningful results, HCFA has not authorized use of this letter by GHI on a regular basis.

As noted above, the number of nonresponding employers has increased over the years as HCFA curtailed the follow-up procedures and we, therefore, believe improved written follow-up procedures are needed to ensure compliance by nonresponding employers. We believe the main points of the stronger language letter should be incorporated into the current follow-up letter.

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<sup>5</sup>Known as "Letter D" and "Letter E." For examples, see Appendix A and Appendix B, respectively.

<sup>6</sup>Known as "Letter F." For an example see Appendix C.

## **PERSONAL FOLLOW-UP PROCEDURES FOR EMPLOYERS WHO FAIL TO RESPOND TO THE FOLLOW-UP LETTER**

Current follow-up procedures do not call for a personal follow-up, e.g., telephone call or visit, with nonresponding employers, yet we found this to be a successful follow-up tool.

To help identify reasons why employers failed to respond to DM inquiries, we selected a sample of 60 nonresponding employers from DM IV. The sample consisted of the 10 employers with the largest number of identified total workers and a random selection of 50 of the next 1,229 largest nonresponding employers. We contacted each employer via a telephone call to ask why they did not respond to the DM requests. We were able to readily contact and get 33 of these employers to respond to our questions.

We noted that 18 of the 33 employers claimed to have not received or were unaware of the DM questionnaire. Many of these individuals we spoke to stated that they were relatively new in their position in the organization's health benefits unit and the questionnaire and the follow-up letter were probably received by a staff member no longer working in that location.

We also noted seven employers claimed that they did not respond because of difficulty in completing the questionnaire, five employers claimed to be still in the process of completing the questionnaire about a year after the DM questionnaire was mailed, and three employers claimed that their records were missing or unavailable.

We found most of the employers that claimed to have not received the questionnaire requested that replacement questionnaires be sent to them. We notified GHI of their request and new questionnaires were sent out accordingly. As of August 1999, 13 of the 33 employers that spoke to us had later submitted completed questionnaires to GHI.

Since our personal follow-up was successful, we believe that HCFA should incorporate a personal contact in its follow-up procedures for employers who fail to respond to the written requests for information.

## **FUTURE CMPs AND COORDINATION WITH OIG**

For future DMs, if the more forcefully written follow-up and personal contact are not successful, we believe HCFA should assess CMPs when warranted for nongovernmental employers who fail to respond. For governmental agencies who fail to respond, we recommend that HCFA work with the OIG to try to get compliance through oversight agencies, such as the State Auditor General or the Inspector General, and assess CMPs if given the authority to do so.

## CONCLUSION AND RECOMMENDATIONS

The DM has been successful in obtaining group health plan information from approximately 1.7 million employers, and has resulted in approximately \$2.5 billion in MSP savings to the Medicare program. However, we are concerned about the remaining 13 percent. As of September 30, 1998, HCFA had identified 245,674 employers with 1,232,786 potential MSP employees who had not responded to requests for information for 1 or more of the DMs. If the nonresponding employers had the same percentage of MSP-covered workers and MSP savings as the responding employers, we believe the trust funds may have lost potential savings approximating \$282 million as a result of these employers not responding to DMs I through IV.

Without HCFA effectively using all the available remedies available to aggressively pursue compliance by nonresponding employers, the Medicare trust funds will continue to lose potential MSP savings and there is an increased risk that a greater number of employers will choose to ignore this legislatively-mandated request for information.

We are, therefore, recommending several steps which HCFA should take to more aggressively pursue compliance with the MSP requests for information:

- For the nongovernmental employers who failed to respond to the data requests from the prior DMs, we recommend that HCFA assess CMPs if warranted.
- For governmental employers, we recommend that HCFA seek legislative authority to assess CMPs for failure to respond to DM requests for information.
- For governmental employers which failed to respond to prior DMs, we recommend that HCFA work with the OIG to partner with oversight agencies (e.g., the State Auditor General or Inspector General) to encourage these agencies to comply with Federal law.
- For both governmental and nongovernmental employers in future DMs, HCFA should improve its written follow-up procedures, such as routine use of a strongly worded follow-up letter.
- For both governmental and nongovernmental employers who fail to respond to the more forcefully written follow-up letter in future DMs, we recommend that HCFA make telephone calls or personal visits to request the information.
- For nongovernmental employers who do not respond to the more forcefully written follow-up letter and personal contact in future DMs, we recommend that HCFA assess CMPs when warranted.

- For governmental agencies who do not respond to the more forcefully written follow-up letter and personal contact in future DMs, we recommend that HCFA work with the OIG to try to obtain compliance through oversight agencies and assess CMPs if given the authority to do so.

### **HCFA Comments**

In its comments to our draft report (see Appendix D), HCFA concurred with our recommendations. Specifically, HCFA recognized the importance of assuring that all employer group health plans respond to requests for information as part of the MSP DM. To help assure compliance by the plans, HCFA agreed to initiate a test case to determine the amount of additional staff and resources it will use to assess CMPs against noncompliant employers. For governmental employers, HCFA supported seeking legislative authority for assessing CMPs against governmental employers, and supported an OIG partnership with oversight agencies as an additional compliance tool. For governmental employers, HCFA also noted “an additional, stronger tool would be legislative authority for mandatory data sharing by governmental (federal, state, and local) employers. At a minimum, such data sharing should be required at the federal level.”

For both governmental and nongovernmental employers, HCFA agreed to improve its written follow-up procedures and intends to issue a strongly worded follow-up letter on an approximately yearly basis, and supports the initiation of follow-up phone calls and personal visits to help assure compliance.

The HCFA also provided technical comments regarding our draft report.

### **OIG Comments**

We believe that HCFA’s proposed corrective actions, when fully implemented, should help to ensure that employer group health plans respond to requests for information as part of the MSP DM. We support legislative authority for mandatory data sharing with HCFA by governmental employers. In fact, in the past, we have recommended mandatory data sharing by insurance companies, underwriters, and third-party administrators. We encourage HCFA to seek this legislative authority.

With respect to HCFA’s technical comments, we made changes to the report, where appropriate.

Appendix A  
Example of "Letter D"



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
HEALTH CARE FINANCING ADMINISTRATION  
MEDICARE SECONDARY PAYER  
IRS/SSA/HCFA DATA MATCH PROJECT

MEDICARE SECONDARY PAYER

	PIN:	DATA MATCH MAIL DATE
XXXXXXXXXXXXXXXXXXXXXXXXXXXX CHIEF EXECUTIVE OFFICER EMPLOYER XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX		

Dear Employer:

Medicare needs your immediate cooperation. A law was enacted in 1989 to provide the Health Care Financing Administration (HCFA) with better information about Medicare beneficiaries' health coverage. The purpose of this law is to help Medicare identify situations where another health care plan should be, or should have been, the primary payer for a Medicare beneficiary's health services.

The law requires the Internal Revenue Service (IRS), the Social Security Administration (SSA), and HCFA to share certain information that each agency has about Medicare beneficiaries and their spouses. The process for sharing this information is called the Data Match. The Data Match will identify employers whose health care plans, if any, are likely to be primary payers to Medicare for certain Medicare beneficiaries. The law requires HCFA to contact these employers to confirm coverage information. This information will be used both to recover payments which Medicare mistakenly made for an individual covered under an employer's health plan, and to prevent Medicare from mistakenly making primary payments for such individuals in the future.

On or about your organization was mailed an IRS/SSA/HCFA Data Match employer questionnaire. The law requires that you complete and return this questionnaire within 30 days of receipt.

As of the date of this notice we have not received your completed questionnaire. It is extremely urgent that you return this questionnaire immediately. Our records indicate that you were required to provide information on workers. These workers were either entitled to Medicare or were married to Medicare entitled individuals. Your failure to respond timely or accurately to the Data Match questionnaire could lead to the imposition of a civil monetary penalty of up to \$1,000 for each worker for which an inquiry was made. In addition, the assessment of a civil monetary penalty will not relieve you of the requirement to provide this information. You will not be assessed the civil monetary penalty if your report is returned immediately. Please be advised that HCFA will take further action if you do not respond to this request.

The law that governs these reporting requirements is Section 1862(b)(5) of the Social Security Act, 42 U.S.C. 1395y(b)(5), as enacted by Section 6202 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239. The civil monetary penalty is specifically authorized by 1862(b)(5)(c)(ii), 42 U.S.C. 1395y(b)(5)(c)(ii). Implementing regulations for the Medicare Secondary Payer provisions are found at 42 C.F.R. 411.20 et. seq.

If you believe this notice is incorrect, or if you have any additional questions, a toll-free number is available to assist you. The number is:

1-800-999-1118

Operators are available Monday through Friday 8:00 am to 8:00 pm (EST). Thank you in advance for your cooperation.

The Medicare Program

**P.O. BOX 1811 - NEW YORK, NY 10023-1479 - 1800-999-1118**





U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
HEALTH CARE FINANCING ADMINISTRATION  
MEDICARE SECONDARY PAYER  
IRS/SSA/HCFA DATA MATCH PROJECT

MEDICARE SECONDARY PAYER

**DATA MATCH**

EIN:

Dear Employer:

Medicare needs your immediate cooperation. A law was enacted in 1989 to provide the Health Care Financing Administration (HCFA) with better information about Medicare beneficiaries' health coverage. The purpose of this law is to help Medicare identify situations where another health care plan should be, or should have been, the primary payer for a Medicare beneficiary's health services.

On or about your organization was mailed an IRS/SSA/HCFA Data Match Employer questionnaire for tax year 1997. The law required that you complete and return this questionnaire within 30 days of receipt. As of the date listed on the top of this notice, we have not received your completed questionnaire.

**IMPORTANT!**

It is extremely urgent that you return the completed data immediately. Our records indicate that you were required to provide information on worker(s) who were either entitled to Medicare or were married to Medicare entitled individuals. Your failure to respond timely or accurately to the Data Match questionnaire could lead to the imposition of a civil monetary penalty of up to \$1,000 for each worker for which an inquiry was made. Therefore, a civil monetary penalty of up to \$ could be assessed. In addition, the assessment of a civil monetary penalty will not relieve you of the requirement to provide this information.

You will not be assessed the civil monetary penalty if your report is returned immediately. The law that governs these reporting requirements is Section 1862(b)(5) of the Social Security Act, 42 U.S.C. 1395y(b)(5), as enacted by Section 6202 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239. The civil monetary penalty is specifically authorized by 1862(b)(5)(c)(ii), 42 U.S.C. 1395y(b)(5)(c)(ii). Implementing regulations for the Medicare Secondary Payer provisions are found at 42 C.F.R. 411.20 et. seq.

If you believe this notice is incorrect, or if you have any additional questions, please contact the toll-free number listed below.

Thank you in advance for your cooperation.

The Medicare Program

**P.O. BOX 1811 - NEW YORK, NY 10023-1479 - 1-800-999-1118**



DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH CARE FINANCING ADMINISTRATION

7500 SECURITY BOULEVARD  
BALTIMORE, MD 21244-1850

EIN:

Dear Sir or Madam:

I am writing to express my strong concern over the continued non-compliance of  
with Section 42 U.S.C. , section 1395y(b)(5), more commonly known as the Medicare Secondary Payer Data Match. Our information shows that your company has not responded to Data Match V that requested information concerning tax year 1996.

The Data Match law requires employers to provide the Health Care Financing Administration ("HCFA") with information regarding the health coverage of its Medicare eligible workers, and spouses of Medicare eligibles, when HCFA identifies those individuals to the employer. Generally, the information asks if each named individual worked during a specified time period, and if so, whether he or she had concurrent employer sponsored group health coverage (See Attachment).

The purpose of the Date Match legislation is to safeguard the Medicare Trust Fund by ensuring proper coordination of benefits between group health plans and Medicare. HCFA takes the information provided by employers and loads it into a nationwide computer file. This helps HCFA's contractors to identify claims on an ongoing basis for which Medicare should not pay primary. These efforts have saved the Medicare Trust Fund about \$1.4 billion dollars to date. Savings like this enables us to keep the Trust Fund viable and to pay for Medicare covered services for current and future beneficiaries.

Our records show that HCFA, through its Data Match contractor, has requested Data Match V information from your organization on several occasions. Our records further show that, although the law mandates that employers respond within 30 days of our initial inquiry, to date we have either not received a response, or received incomplete information from you.

I am sure that you are aware of the increasing focus on and sensitivity to the fears and concerns of the Medicare population regarding available and affordable health care and the potential diminution of the Medicare Trust Fund. I am also sure that as an executive of a large organization you are aware of the important impact that timely, reliable, and accurate insurance claims billing information has on this issue. For these reasons, I am extremely disappointed that  
continues to defy Federal law, particularly designed to preserve the Medicare Trust Fund for current and future beneficiaries.

Page 2 - Chief Executive Officer

Therefore, we want you to be aware that HCFA may take any of the following actions:

- assess a Civil Monetary Penalty of \$1,000 for each person named in our inquiries for whom you have either not responded or provided incomplete information (pursuant to 42 U.S.C. § 1395y(b)(5));
- subpoena your business records and members of your organization to enforce compliance with the law (pursuant to 42 U.S.C. § 405(d) and 1395(ii)); and
- investigate your group health plan or large group health plan for a determination of nonconformance and, if so found, make a referral to the Internal Revenue Service for the imposition of an excise tax on your organization (pursuant to § 5000 of the Internal Revenue Code and 42 C.F.R. § 411.100 *et seq.*).

If your company recently sent the Data Match contractor your response to Data Match V, please write us and tell us when that response was sent so that we may reconcile our records with theirs. If you have any questions about the manner in which to report the requested information, please contact the Data Match contractor directly at 1-800-999-1118. If, however, within 30 days of the date of this letter you have not brought into compliance, HCFA will take appropriate action.

Please feel free to contact me or Betty Noble of my staff with any questions you have regarding this letter. We can be reached at (410)786-6475.

Sincerely,

Roya Lotfi  
Chief, MSP Operations Branch  
Financial Services Group  
Health Care Financing Administration

Attachment

ATTACHMENT

42 U.S.C. Section 1395y states in pertinent part:

(b) MEDICARE SECONDARY PAYER--

(5) IDENTIFICATION OF SECONDARY PAYER SITUATIONS--  
CONTACTING EMPLOYERS

(i) IN GENERAL - with respect to each individual...who was furnished a written statement under section 6051 of the Internal Revenue Code of 1986 by a qualified employer...the appropriate [Medicare] fiscal intermediary or carrier shall contact the employer in order to determine during what period the employee or employee's spouse may be or (have been) covered under a group health plan of the employer and the nature of the coverage that is or was provided under the plan (including the name, address and identifying number of the plan).

(ii) EMPLOYER RESPONSE - Within 30 days of the date of receive of the inquiry, the employer shall notify the intermediary or carrier making the inquiry as to the determinations described in clause (i). An employer...who willfully or repeatedly fails to provide timely and accurate notice...shall be subject to a civil monetary penalty not to exceed \$1,000 for each individual with respect to which such an inquiry is made.

**DATE:** JUN 16 2000**TO:** June Gibbs Brown  
Inspector General**FROM:** Nancy-Ann Min DeParle *Nancy-A DeParle*  
Administrator**SUBJECT:** Office of the Inspector General (OIG) Draft Report: "Follow-Up Review of the Health Care Financing Administration's Efforts to Assure Employer Group Health Plan Compliance with Medicare Secondary Payer Data Match Requirements" (A-02-98-01036)

Thank you for the opportunity to comment on this report regarding the efforts of the Health Care Financing Administration (HCFA) to ensure that Medicare does not pay claims that should be paid by private insurers. We appreciate the OIG's acknowledgment of our significant work in contacting employers and obtaining group health plan information, and of the overall success of the Data Match (DM). As found in another recent OIG report, our Medicare Secondary Payer (MSP) efforts already are successful at identifying the appropriate primary insurance for 99.6 percent of Medicare beneficiaries. Savings of approximately \$3 billion each year are generated from our MSP activities. In addition, the Administration's Budget Proposal for Fiscal Year 2001 includes a requirement that insurers report a list of beneficiaries that are covered under employer-sponsored group health plans which are primary to the Medicare program.

We agree that it is important to assure that all employer group health plans respond to requests for information as part of the MSP DM, and in fact have taken steps to strengthen our MSP DM efforts. Last year, under new Health Insurance Portability and Accountability Act (HIPAA) authority we hired a new national coordination of benefits contractor to coordinate efforts to ensure that private companies pay their share of Medicare beneficiaries' health care bills. We collect insurance information when beneficiaries first enroll in the Medicare program, as well as prior to each hospital visit. Over the past year, HCFA has developed legislative proposals for strengthening our civil monetary penalty (CMP) authority for state and local governments that do not respond to the DM request. HCFA plans to identify a number of employers that have not complied with prior and current DM requests and utilize a number of OIG report suggestions to obtain compliance. Failure to comply will be documented to show a requisite pattern of noncompliance with the DM requirements.

## Page 2- June Gibbs Brown

As a way of building on our successes to date, we have been working with the Office of General Counsel to identify a pilot test case for imposing CMPs. Through this test case, we can better determine whether the necessary HCFA and contractor resources needed for additional oversight and litigation are warranted. At this point, it is unclear whether the imposition of a \$1,000 fine would lead to greater compliance among employers. Alternatively, the resources required to impose such fines may be better directed at other efforts at increasing compliance and obtaining correct, updated insurance information about beneficiaries.

Following are our specific comments to the report recommendations.

### OIG Recommendation

For the nongovernmental employers who failed to respond to the data requests from the prior DMs, we recommend that HCFA assess CMPs if warranted.

### HCFA Response

We concur. If warranted and cost effective, we support the recommendation that HCFA assess CMPs against nongovernmental employers that have failed to respond to previous data requests. HCFA would require additional staff and resources to handle the process. To determine what resources would be required to efficiently assess CMPs, we intend to pursue a test case with a chronically noncompliant large employer. HCFA has been working with the Health and Human Service's Office of General Counsel to identify an appropriate test case.

### OIG Recommendation

For governmental employers, we recommend that HCFA seek legislative authority to assess CMPs for failure to respond to DM requests for information.

### HCFA Response

We concur. We support providing authority for CMPs against governmental employers, federal, state, and local. However, please note that while imposing CMPs against federal employers would reinforce the compliance message, the CMPs would have no real dollar value to the government as a whole as the funds would simply move from one account to another. An additional, stronger tool would be legislative authority for mandatory data sharing by governmental (federal, state, and local) employers. At a minimum, such data sharing should be required at the federal level.

### OIG Recommendation

For governmental employers which failed to respond to prior DMs, we recommend that HCFA work with the OIG to partner with oversight agencies (e.g., the State Auditor General or Inspector General) to encourage these agencies to comply with Federal law.

Page 3- June Gibbs Brown

HCFA Response

We concur. We support such a partnership as an additional compliance tool.

OIG Recommendation

For both governmental and nongovernmental employers in future data matches, HCFA should improve its written follow-up procedures, such as routine use of its strongly worded follow-up letter mailed in 1997.

HCFA Response

We concur. In fact, we have already used a variation of the letter a total of three times--in 1996, 1997, and 1999. We intend to continue to use this type of letter approximately on a yearly basis.

OIG Recommendation

For both governmental and nongovernmental employers who fail to respond to the more forcefully written follow-up letter in future data matches, we recommend that HCFA make telephone calls or personal visits to request the information.

HCFA Response

We concur. We suggest that telephone contact be initiated before the "strongly worded letter" mentioned in recommendation four; we believe the letter should imply that HCFA has exercised due diligence in offering technical assistance to employers. In general, we support this recommendation but it is unclear whether personal visits would be a cost-effective way of increasing compliance with the data match. Also, follow-up telephone calls from the OIG could yield a higher rate of favorable responses than similar calls by HCFA or a HCFA contractor.

OIG Recommendation

For nongovernmental employers who do not respond to the more forceful written follow-up letter and personal contact in future data matches, we recommend that HCFA assess CMPs when warranted.

HCFA Response

We concur. If warranted and cost effective, we support the recommendation that HCFA assess CMPs against nongovernmental employers that have failed to respond to previous data requests. HCFA would require additional staff and resources to handle the process. To determine what resources would be required to efficiently assess CMPs, we intend to pursue a test case with a chronically noncompliant large employer. HCFA has been working with the Health and Human Service's Office of General Counsel to identify an appropriate test case.

Page 4- June Gibbs Brown

OIG Recommendation

For governmental agencies who do not respond to the more forceful written follow-up letter and personal contact in future data matches, we recommend that HCFA work with the OIG to try to get compliance through oversight agencies and assess CMPs if given the authority to do so.

HCFA Response

We concur. See our prior comments regarding the value of a partnership with the OIG as a way of leveraging compliance. The use of CMPs may implicate significant additional resources, which is why we are planning a pilot project.

Technical Comments

There is an inaccuracy in the description of DMs I-V. The background section describes the DMs as covering "Medicare claim service dates." In fact, a particular DM is for specified tax year(s). The results of particular DMs are then used to determine mistaken primary payments. The Medicare claim service dates addressed in the resulting recovery demand efforts extend beyond the tax year(s) involved in a particular DM because an employer's response may have indicated continuing coverage beyond the tax years at issue.

The incremental HCFA/IRS/SSA DM technical support required of the Coordination of Benefits contract would require a negotiated contract modification. This would be necessary since the Statement of Work pertaining to the November 1, 1999 contract award reflects the current protocol.